## LOUIS BLOM-COOPER v. ATTORNEY-GENERAL, MALAYSIA & ORS.

**[F.C. (Raja Azlan Shah Ag. C.J. (Malaya), Wan Suleiman and Chang Min Tat F.JJ.) August 28, 1978]**

**[Kuala Lumpur — Federal Court Civil Appeal No. 110 of 1978]**

*Legal Profession — Ad hoc admission — Admission of Queen's Counsel — Whether necessary to show special qualifications and experience — Legal Profession Act, 1976 (Act 166), s. 18 (1).*

The appellant, a Q.C., had applied for an order that he be admitted and enrolled as an advocate and solicitor to act as leading counsel with Mr. Karpal Singh for the defence of a person charged with offences under the Official Secrets Act, 1972. The Attorney-General objected on the grounds that there were no special circumstances or facts to justify the granting of the order and that there are sufficient lawyers of experience in Malaysia to represent the accused. The learned Chief Justice dismissed the application on the grounds (a) that the applicant had not shown that he had special qualification or experience for the purpose of the particular case of a nature not available amongst local advocates and solicitors; (b) that except in very special cases no counsel from outside Malaysia should be given *ad hoc* admission solely for the purpose of a criminal case. The appellant appealed.

**Held,** allowing the appeal: (1) the judge in exercising the discretion under section 18 of the Legal Profession Act, 1976, is no longer required (as before) to have regard to whether the applicant possesses special qualifications and experience of a nature not available amongst local advocates and solicitors;

(2) the learned Chief Justice was wrong in limiting the scope of section 18 of the Act in the manner suggested by him;

(3) this was a fit and proper case for the grant of the application.

*Cases referred to:-*

(1) *Re Graham Starforth Hill* [1971] 2 M.L.J. 269, 271.

(2) *Allen* v. *Allen* February 1, 1951 (unreported).

(3) *Simpson* v. *Simpson* [1951] 1 All E.R. 955, 957.

FEDERAL COURT.

*Karpal Singh* for the appellant.

*Datuk Abu Talib bin Othman* (Senior Federal Counsel) for the Attorney-General.

*P. Cumaraswamy* for the Bar Council, Malaya.

*Ong See Seng* for the Bar Committee, Selangor.

**Raja Azlan Shah Ag. C.J. (Malaya)** (delivering the judgment of the Court): Mr. Louis Blom-Cooper is a Queen's Counsel in the United Kingdom. He has wide experience in constitutional and administrative law, especially in the field of law touching on civil liberties, and since taking silk he has engaged in some important criminal trials in the United Kingdom and has also appeared in at least two criminal appeals from this country to the Privy Council. He applied under section 18 of the Legal Profession Act, 1976 for an order that he be admitted and enrolled as an advocate and solicitor of the High Court in Malaya to act as leading counsel with Mr. Karpal Singh for the defence of Mr. Lim Kit Siang who is charged in the High Court in Kuala Lumpur with five offences under the Official Secrets Act, 1972. The Bar Council and the Selangor Bar Committee did not object to the application, but the Attorney-General objected on the grounds that there are no special circumstances or facts to justify the granting of an order and that there are sufficient lawyers of experience in this country to represent the accused. The learned Chief Justice upheld the objection and he dismissed the application. The applicant now appeals to this court.

We note that there are many senior advocates and solicitors who are in active practice in criminal law in this country today, and who are, we are quite sure, ready, able and willing to offer their services to Mr. Lim Kit Siang. But Mr. Lim Kit Siang does not want their services. He wants the applicant to act for him as leading counsel. It is as simple as that. Whether it is morally right for him to embark on that course, it is not for us to say. We are not here sitting as a court of morals.

What is the proper test to apply in a case like this? We are of the opinion that no general test applicable to all cases can safely be laid down. We do not think much assistance is to be derived from what has been said in other cases when the question has arisen in other circumstances. We therefore make no attempt, where others have failed, to rationalise the proper test. Each case must be looked at separately. We must accordingly interpret section 18 as it stands and with reference to what is there enacted, and then it seems to us that the problem is solved without the smallest difficulty. Section 18(1) of the Legal Profession Act enacts as follows:

> "(1) Notwithstanding anything to the contrary contained in this Act, the court may, in its sole discretion for the purpose of any one or more specific causes or matters, admit to appear as counsel any person —
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> (a) who holds Her Britannic Majesty's Patent as Queen's Counsel or has special qualifications or experience for the purpose of such cause or matter or has been in active practice as an advocate and solicitor in Singapore for not less than seven years immediately preceding the filing of the application for admission;
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> (b) who does not ordinarily reside in Malaysia but who has come or intends to come to West Malaysia for the purpose of appearing in such causes or matters; and
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> (c) who is or will if admitted be instructed by an advocate and solicitor."

All that the section says is that any person who belongs to any one of the 3 categories of persons is qualified to apply for admission. Parliament has there set out the "guide lines" indicating some of the considerations to which the judge should have regard. Beyond that it has by clear words conferred on him a virtually unfettered discretion to admit any of the classified category of persons as an advocate and solicitor. In such circumstances it is plain that this court can reverse the decision of the learned Chief Judge only if this court is satisfied that the exercise of discretion is plainly wrong.

Is the learned Chief Judge wrong in the exercise of the discretion? His reasoning is as follows:

> "It is common ground that the court has sole discretion in deciding whether or not to allow an application under section 18 of the Act. For the exercise of that discretion the only question which as a matter of principle the court has to consider is whether the applicant has special qualifications or experience for the purpose of the particular case and whether such qualifications and experience are of a nature not available amongst local advocates and solicitors. That is what Mohamed Azmi J. said in *Re Graham Starforth Hill,*[1] with which I entirely agree with respect."

In order to answer the question we must consider whether there is any material difference between section 18 of the Legal Profession Act and section 8A of the repealed Advocates and Solicitors Ordinance No. 4 of 1947. The learned Chief Justice is of the view that there is no fundamental change between them. We take a different view. In former times only one class of persons, viz., those who have special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia would be given consideration. Examples are many. In 1970 Mr. Michael John Mustill Q.C. (now a judge of the High Court of the United Kingdom) and Mr. Edward Frederick Noel Gratiaen Q.C., a former Solicitor-General of Ceylon, were admitted to do a marine insurance case; in 1971, the late Sir Dingle Foot Q.C. was admitted to appear in a sedition case; in 1974, Mr. R.J. Burrell Q.C. was admitted to appear in a trade marks case. Those gentlemen were admitted because of their special qualifications or experience of a nature not available amongst advocates and solicitors in this country. Those days are now passed. There has been a change of attitude. The provisions enacted in section 8A have been repealed by the Legal Profession Act. Parliament has today given wider powers to the judge. He can now consider three categories of persons: a Queen's Counsel, a person who has special qualifications or experience for the purpose of such cause or matter or any advocate and solicitor who has been in active practice in Singapore for not less than seven years. That is a revolutionary change which will enable justice to be done.

We are therefore of the view that the learned Chief Judge has considered the present case on a wrong principle. He has applied the principle enunciated in *Re Graham Starforth Hill, supra,* which is a case under a law which has been repealed. He is clearly wrong. The judge in exercising the new discretion under section 18 is no longer required to have regard that the applicant possesses special qualifications and experience of *a nature not available amongst local advocates and solicitors.* Had there been the intention, we feel no doubt that the legislature would have expressed it.

That is not the end of the matter. The learned Chief Judge added that "except in very special cases no counsel from outside Malaysia should be given *ad hoc* admission solely for the purpose of a criminal case. The position of civil cases is entirely different." With respect, we think he has gone too far. The words of Sir Raymond Evershed M.R. in *Allen* v. *Allen,* quoted in *Simpson* v. *Simpson,*[2] appear to be apposite: "The material language of the section has, I think, always in these matters to be borne in mind, for if a court is prone too much to indulge in exposition and attempted definition, there is a risk that there will be substituted for the language chosen by Parliament some other forms of words." We conclude by saying that we see no justification for limiting the scope of section 18 in the manner in which it is suggested by the learned Chief Judge. The relevant words of the section are so clear that they cannot be construed restrictively as applying to special cases.

A singular feature of the forthcoming case is that it involves, *inter alia,* the question relating to the duties of a Member of Parliament and parliamentary privileges both inside and outside Parliament, which question is of considerable public interest and is being raised for the first time in this country.

It is also an important point to note that the (U.K.) Official Secrets Act from which we have received inspiration is going through a revolutionary change. The Act has been criticized as being no longer efficacious in U.K. today. They are having a second look at it. In fact a bill based on the recommendation of the Franks Committee Report of 1972 is before the United Kingdom Parliament. We feel that one way of finding a possible answer to the question before us is to see how similar problems are dealt with in countries which have fundamentally the same law. In our view, considering other people's law is the usual way to see ourselves as others see us. Perhaps the correctness of our own decisions can be confirmed or some ideas for improvements may be discerned by looking at them. We have no doubt that the applicant may be able to assist us at first hand.

In the circumstances of this case, we are of the opinion that this is a fit and proper case to grant the application in terms of the motion. We would accordingly allow the appeal.

*Appeal allowed.*

Solicitors: *Karpal Singh & Co.*

## CHIN CHOY & ORS. v. COLLECTOR OF STAMP DUTIES

**[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman and Chang Min Tat F.JJ.) March 22 and September 25, 1978]**

**[Kuala Lumpur — Federal Court Civil Appeal No. 123 of 1977]**

*Revenue Law — Stamp duty — Market value — Effective date — Date of agreement of sale or of execution of transfer — Stamp Ordinance, ss. 12A and 59.*

*Interpretation of statutes — Literal meaning — Taxing statute — Clear and ambiguous words — Stamp Ordinance, ss. 12A and 59.*

This was an appeal from the decision of Abdul Hamid J., reported at [1978] 1 M.L.J. 46. The question raised was in relation to the assessment of the stamp duty on the transfer of property. The property in question was agreed to be sold in October 1971 for the agreed consideration of $49,000 but the transfer was executed in 1973. The Collector of Stamp Duties in an adjudication exercise set a figure of $65,000 as being in his view, the market value of the property at the date of the execution of the transfer. It was argued on behalf of the appellant that the duty payable on the instrument of transfer of the property should be based either on the money value mentioned in the instrument or the market value on the date of the sale and purchase agreement and not on the date of the execution of the instrument of transfer. Abdul Hamid J. held that in the light of section 12A of the Stamp Ordinance the market value of the property was that on the date of the execution of the transfer and not the date of the sale and purchase agreement and that therefore the Collector of Stamp Duty had made a proper assessment of duty in this case. The appellants appealed.

**Held,** dismissing the appeal: there is no ambiguity whatsoever in the words and meaning of section 12A of the Stamp Ordinance and the Collector of Stamp Duty was therefore justified, where he has reason to believe that the consideration mentioned in the transfer did not reflect the proper market value at the date of the execution of the transfer, in imposing